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**From:** Fairbanks, Brianna [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=8245A7918577465BB6825C57AA2BEE9C-BFAIRBAN]  
**Sent:** 10/30/2019 10:09:07 PM  
**To:** Praskins, Wayne [Praskins.Wayne@epa.gov]  
**Subject:** RE: CERCLA 120(a)(2)

## Ex. 5 Attorney Client (AC)

**Brianna Fairbanks**

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**From:** Praskins, Wayne <Praskins.Wayne@epa.gov>  
**Sent:** Wednesday, October 30, 2019 11:13 AM  
**To:** Fairbanks, Brianna <Fairbanks.Brianna@epa.gov>  
**Subject:** CERCLA 120(a)(2)

Brianna –

Please take a look at Dan Hirsh's commentary on CERCLA 120(a)(2). I don't see anything new here but would like to get your perspective.

## Ex. 5 Deliberative Process (DP)

Wayne Praskins | Superfund Project Manager  
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**From:** DanielHirsch <Ex. 6 Personal Privacy (PP)>  
**Sent:** Friday, October 25, 2019 4:01 PM  
**To:** Praskins, Wayne <Praskins.Wayne@epa.gov>  
**Cc:** Sanchez, Yolanda <Sanchez.Yolanda@epa.gov>; Walker, Stuart <Walker.Stuart@epa.gov>  
**Subject:** followup to telcon

Hi Wayne,

I wanted to follow up on a matter we discussed in our telephone conversation earlier this week, the requirement that the Navy cannot utilize any guidelines, rules, regulations, or criteria for remedial actions at Hunters Point that are inconsistent with EPA's CERCLA guidelines, rules, regulations, and criteria. This is a statutory prohibition for federal facilities, found at CERCLA §120(a)(2):

APPLICATION OF REQUIREMENTS TO FEDERAL FACILITIES .—  
All guidelines, rules, regulations, and criteria which are

applicable to preliminary assessments carried out under this Act for facilities at which hazardous substances are located, applicable to evaluations of such facilities under the National Contingency Plan, applicable to inclusion on the National Priorities List, or applicable to remedial actions at such facilities shall also be applicable to facilities which are owned or operated by a department, agency, or instrumentality of the United States in the same manner and to the extent as such guidelines, rules, regulations, and criteria are applicable to other facilities.

**No department, agency, or instrumentality of the United States may adopt or utilize any such guidelines, rules, regulations, or criteria which are inconsistent with the guidelines, rules, regulations, and criteria established by the Administrator under this Act.**

(emphasis added)

This statutory requirement is thus mandatory. EPA has long insisted that the CERCLA consistency requirement be obeyed. For example, when DOE attempted to adopt draft radiation protection regulations (draft 10 CFR 834), EPA cited the consistency requirements of CERCLA §120(a)(2) in its opposition (attached), saying in a section entitled "Consistency with CERCLA":

"CERCLA section 120(a)(2) prohibits Federal Facilities from adopting or utilizing any rule, guidance or criteria applicable to CERCLA remedial actions that are inconsistent with EPA CERCLA remedial action requirements. This section makes clear that Federal Facilities are held to the same standards and requirements as non-federal facilities. The draft rule appears to be inconsistent with CERCLA and the NCP...."

Similarly, when DOE attempted to use cleanup standards and guidance inconsistent with EPA's CERCLA standards and guidance at SSFL, EPA Region IX likewise made clear that the proposed action was inconsistent with CERCLA; see attached.

Thus, at Hunters Point, CERCLA §120(a)(2) mandates that the Navy not use standards, guidance, etc. that are inconsistent with EPA's standards, guidance, etc. The Navy therefore is required to use, for example, EPA's PRG calculators and inputs consistent with what EPA has determined are appropriate, UNLESS the Navy can demonstrate to EPA that alternative calculators like RESRAD or assumptions like assuming a large depletion factor for dust are **consistent** with EPA's PRG calculators and input assumptions. The Navy has defaulted on this obligation, not even submitting BPRG calculations along with its RESRAD-BUILD calculations, which the Q&A guidance requires; not providing basis for changed inputs; and making no attempt to demonstrate that what it has done is consistent with EPA's guidance. (For example, the use by the Navy of the AEC's 1974 Regulatory Guide 1.86 for building cleanup standards is completely inconsistent with EPA's CERCLA guidance. Turning off the garden inputs in the soil calculations when gardens are permitted and the Navy hasn't even proposed, let alone adopted, ICs that would change that, is similarly inconsistent with EPA CERCLA guidance.) The Navy is required to obey, and EPA is required to enforce, the 120(a)(2) consistency requirement.

Best wishes,

Dan

